

## HUMAN SERVICES BOARD

# INTRODUCTION

## Procedural History

The petitioner filed for a fair hearing on June 19, 2009. The hearing scheduled for July 8, 2009 was converted

into a status conference. The Department was instructed to explain their legal position in writing and to attach all pertinent portions of petitioner's file including Applications, Notices of Decisions, CATN notes, and information provided by petitioner regarding his annuity and time-share so that the petitioner was informed of the basis of the Department's decision. The petitioner was advised to seek legal help.

Telephone status conferences were held on August 3 and 20, 2009. Petitioner was again advised to seek legal help. The case was scheduled for an additional in-person hearing/conference on October 14, 2009 to give petitioner an opportunity to add to the record and arguments; petitioner did not take this opportunity.

The following decision is based upon the materials and arguments presented by the parties.

#### FINDINGS OF FACT

1. The petitioner is a twenty-seven year old disabled man. He resides with his parents on their farm. He is considered a one person household under the provisions of the Vermont medical addistance programs.

2. Petitioner suffers from a traumatic brain injury and resulting physical limitations. He is in a wheelchair.

3. Petitioner was a plaintiff in a personal injury action that was settled in his favor. The structured settlement set up an annuity for life that is guaranteed for 25 years beginning on August 21, 2006. Under the annuity, petitioner receives \$6,087.53 per month. His mother and father are designated beneficiaries of the annuity. The annuity comports with the requirements of Sections 104(a) and 130(c) of the Internal Revenue Code meaning that the annuity is not considered taxable income.

4. Petitioner owns a time-share in Florida that is valued at \$15,000. The value of petitioner's time-share exceeds the resource limit for Medicaid which is \$2,000 for one person.

5. A.T. is petitioner's mother. She has helped petitioner with his interactions with the Department and with the Health Access Eligibility Unit. Petitioner authorized her to do so.

6. Petitioner sought assistance for Medicaid and long-term care Medicaid from the district office of the Department and sought VHAP through the Health Access Eligibility Unit (HAEU).

7. The first mention of the annuity in the Department records is a CATN note from N.B., a district office eligibility specialist, who spoke to A.T. on November 12, 2008 regarding long-term care Medicaid and who indicated that they would need more information about the annuity before determining whether the annuity would be treated as income under the Medicaid program. The petitioner filed an application for long-term care Medicaid on November 19, 2008. This application was subsequently denied but is not at issue in this appeal.

8. Petitioner filed an application for medical assistance on December 31, 2008. In that application, petitioner did not report that he received unearned income from an annuity. Petitioner does not consider the monies received from the annuity to be income because of the annuity's treatment under the Internal Revenue Code. This application was processed by L.S., a benefits program specialist at HAEU.

9. On January 13, 2009, HAEU issued a Notice of Decision finding petitioner eligible for VHAP.<sup>1</sup> HAEU found

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<sup>1</sup> HAEU did not have income information regarding petitioner's annuity when they made this decision.

petitioner ineligible for Medicaid because the Department had not yet established that petitioner was disabled.

10. The Medicaid claim was subsequently sent to the Disability Determination Unit who found petitioner disabled. Once petitioner was determined disabled, the financial eligibility criteria for Medicaid were considered.

11. As part of the Medicaid process, petitioner submitted a resource list dated January 18, 2009. The resource list included the Florida timeshare.

12. During February and March 2009, L.S. followed up with petitioner and A.T. to obtain information about the annuity. Materials were provided HAEU including a March 5, 2009 letter explaining the annuity and March 20, 2009 information from A.T. about the settlement.

13. On May 5, 2009, the Department issued a Notice of Decision closing petitioner's VHAP benefits effective May 31, 2009 because he was over-income for VHAP. Petitioner was also denied Catamount Health Assistance Program (CHAP) benefits because he was over-income for CHAP.

14. On May 4, 2009, the Department issued a Notice of Decision finding petitioner ineligible for Medicaid because he was over-income for Medicaid.

ORDER

The Department's decision is affirmed.

REASONS

Introduction

The petitioner bases his argument on the Internal Revenue Code's treatment of his annuity. He points to 26 U.S.C. § 104 which deals with how the Internal Revenue Service treats compensation for injuries or sickness in terms of federal income taxes. The pertinent part of Section 104 states:

(a) In general

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include-

. . .

(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;. . .

The petitioner requests that the definition of income used by the Internal Revenue Service supersede the definition of income used in the Medicaid and Medicaid waiver (VHAP and CHAP) programs.

There is no legal basis to do so. The purpose of the Internal Revenue Code is to determine what monies are taxable by the federal government.

The Medicaid program is a cooperative federal/state program to provide medical assistance to low income families, seniors, and the disabled. 42 U.S.C. § 1396. The Medicaid program has its own statutory and regulatory framework defining eligibility including income and resource limits. In this way, Medicaid is similar to other welfare programs that define financial eligibility for benefits; e.g. Food Stamps, Temporary Assistance for Needy Families (TANF).

The Centers for Medicare and Medicaid have approved Vermont waivers that allow for expanded financial eligibility criteria for VHAP and CHAP; however, these programs are still income sensitive.

Petitioner's eligibility for Vermont's medical assistance programs is dealt with below.

VHAP and CHAP

Vermont offers two primary medical programs to adults who are not eligible for the Medicaid program. The programs are VHAP and CHAP.

The VHAP program provides health insurance for households whose countable income is equal to or less than 185 percent of the Federal Poverty Level (FPL). W.A.M. § 5310.<sup>2</sup> The maximum countable monthly income for a household of one to qualify for VHAP is \$1,676. P-2420B.

The CHAP program including premium assistance for uninsured adult Vermonters provides coverage for individuals who are not eligible for the Vermont Health Access Program (VHAP) and whose income is equal to or less than 300 of the Federal Poverty Level (FPL). W.A.M. §§ 5910 and 5913. The CHAP program uses the VHAP regulations to determine countable income. The maximum countable monthly income for a household of one to qualify is \$2,718. P-2420B.

The definition of income is found at W.A.M. § 5321; the pertinent part states:

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<sup>2</sup> The Department has renumbered their regulations. VHAP was formerly at W.A.M. § 4000 et seq. and is now at W.A.M. § 5300 et seq. CHAP regulations have moved from W.A.M. § 4100 et seq. to W.A.M. § 5900 et seq. The Medicaid regulations governing eligibility for the aged, blind, and disabled has moved from M200 et seq. to W.A.M. § 4200 et seq.



Countable income is all earned and unearned income, as defined in this section, less all allowed deductions.

. . .

B. Unearned Income

Unearned income includes, but is not limited to the following:

Income from pension and benefit programs, such as social security, railroad retirement, veteran's pension or compensation, unemployment compensation, and employer or individual private pension plans or annuities.

. . .

Unearned income does not include the following:

Infrequent or irregular voluntary cash contributions or gifts. . .

In-kind income.

Five percent of a VA monthly award that is retained by a guardian.

Petitioner's annuity is considered unearned income.

Annuities are not listed in the income exclusions found at W.A.M. § 5322.

Petitioner argues that his annuity should not be considered income because the annuity is not considered income under the Internal Revenue Code and is not subject to taxation. The problem with petitioner's argument is that the definition of income for income tax purposes does not govern the definition of income in the medical assistance programs

Vermont has created to extend medical coverage to those individuals who do not qualify for Medicaid but whose income is under certain limits, either 185 percent of the FPL for VHAP or 300 percent of the FPL for CHAP. This policy is quite different from that of the Internal Revenue Service which protects certain type of legal settlements from taxation.

The Board has looked at the interplay of the VHAP regulations and the Internal Revenue Code in cases where the VHAP regulations do not allow depreciation to be used as a business expense to calculate countable income although the Internal Revenue allows depreciation as a business expense. The Board has followed the VHAP regulations. See Fair Hearing No. 17,465. By analogy, the same result should follow here.

Petitioner's monthly income of \$6,087.53 is in excess of the maximum monthly income allowed under VHAP (\$1,676) and is in excess of the maximum monthly income allowed under CHAP (\$2,718). Accordingly, the Department correctly decided to close petitioner's VHAP benefit and to deny CHAP benefits.

Medicaid

To qualify for Medicaid as a disabled individual, the individual must meet both the resource test and the income test for a household of his size. W.A.M. § 4200. The resource limit for a household of one is \$2,000. P-2420C. The maximum countable income for a household of one outside Chittenden County is \$916 per month. P-2420B.

Petitioner owns a time-share in Florida worth \$15,000. As a result of the time-share, petitioner is over the resource limit for Medicaid and is not eligible for Medicaid.

Although the inquiry can stop with the resource decision, petitioner was informed that he was not eligible for Medicaid based upon his income.

W.A.M. § 4270 defines income as "any form of cash payment from any source". Unearned income is defined at W.A.M. § 4273 and specifically includes annuities. A \$20 disregard is applied to unearned income. W.A.M. §4281.1.B. Applying the \$20 disregard to petitioner's monthly income leaves countable income of \$6,087.53 which is in excess of the maximum monthly income level of \$916. The Department is correct that petitioner is over the income level for Medicaid.

In conclusion, the Department's decision to terminate VHAP, and deny both CHAP and Medicaid because petitioner was over-income for those programs as well as over the resource limit for Medicaid is affirmed. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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